

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/CS/CS/SB 2480

SPONSOR: Transportation; Agricultural; Commerce, Economic Opportunities, and Consumer Services Committees, Senators Alexander and Lynn

SUBJECT: Agricultural Equipment Manufacturers

DATE: April 19, 2004 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cibula/Maclure</u>	<u>Maclure</u>	<u>CM</u>	<u>Fav/CS</u>
2.	<u>Weidenbenner</u>	<u>Poole</u>	<u>AG</u>	<u>Fav/CS</u>
3.	<u>Eichin</u>	<u>Meyer</u>	<u>TR</u>	<u>Fav/CS</u>
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The CS/CS/CS/SB 2480 revises the uniform traffic laws to permit certain agriculture equipment to qualify for the exemption from the limitations on maximum width and length. It expands the types of businesses governed by the provisions of the Farm Equipment Manufacturers and Dealers Act (Act). Currently, the act regulates the contractual relationships between a tractor or farm equipment dealer who sells farm implements which are primarily for use in agriculture and its manufacturer, distributor, or wholesale suppliers. The provisions of the CS/CS/CS will make the act applicable to the contractual relationships between a dealer of tractors, farm implements, and items including irrigation equipment primarily for use in commercial agriculture or horticulture and its suppliers. It also excludes from the definition of a dealer a mass-market retailer. In addition, the measure provides the act does not apply to machinery primarily designed for, or used in, off-road construction, mining, or industrial non-agricultural purposes.

New provisions of the act as amended by the CS/CS/CS:

- Allow agricultural tractors and other towed or self-propelled farming equipment certain exemptions from maximum width, height, and length restrictions when used on public highways.
- Make it unlawful for a dealer’s supplier to withhold payment of funds owed to a dealer.
- Prohibit a dealer’s supplier from conducting audits of warranty claims more than 1 year after the claims were paid and require audits of incentives and rebates paid to a dealer to take place within 12 months after the end of an incentive program.
- Require a dealer’s suppliers to provide 180-days notice to the dealer when a competing dealer will be located in the existing dealer’s relevant market area.

- Require a commission of 7% of the sales price to be paid to the dealer by the manufacturer, for dealer preparation and delivery when equipment is sold by the manufacturer directly to the consumer.
- Provide franchise agreements may only be terminated for failure to meet marketing or market-penetration criteria with advance notice to the dealer of at least 1 year and 90 days.
- Prohibit a dealer's suppliers from imposing unreasonable restrictions on the location, transfer, and site control of a dealer.
- Make it unlawful for a manufacturer, distributor, or wholesaler to prohibit a dealer from selling competing product lines.

Provisions of existing law having the effect of making the provisions of the CS/CS/CS applicable to contracts in existence before the effective date of the CS/CS/CS are revised to make provisions of the act prospective.

This CS/CS/CS substantially amends the following sections of the Florida Statutes: 316.515, 686.40, 686.401, 686.402, 686.403, 686.405, 686.406, 686.407, 686.409, 686.413 and 686.418.

II. Present Situation:

Presently, agricultural tractors and agricultural implements are not specifically described as being a type of vehicle that can exceed the maximum width and length limitations contained in the uniform traffic laws.

The Act, codified in ss. 686.40-686.418, F.S., regulates the contractual relationship between a tractor or farm equipment dealer and manufacturers, distributors, and wholesalers of tractors and farm equipment. The act applies to all agreements between a tractor or farm equipment dealer and its suppliers of tractors and farm equipment having no expiration date and to contracts entered into or renewed after July 1, 1984.¹

Definitions

Under the act, a tractor or farm equipment dealer is "a person who sells, solicits, or advertises the sale of new and used tractors and farm equipment to the consuming public."² A manufacturer is a "person engaged in the business of manufacturing or assembling new and unused tractors and farm equipment."³ A distributor or wholesaler is a "person, firm, association, corporation, or company that sells or distributes new tractors and farm equipment to tractor or farm equipment dealers."⁴ "Farm equipment" means those farm implements which are primarily designed for use in agriculture."⁵

Warranty Service

¹ Section 686.403(2) and (3), F.S. The effective date of the act was July 1, 1984.

² Section 686.402(16), F.S.

³ Section 686.402(11), F.S.

⁴ Section 686.402(1), F.S.

⁵ Section 686.402(6), F.S.

According to the act, when a tractor or farm equipment dealer satisfies warranty claims by providing parts or services, the dealer must be paid within 30 days by the manufacturer, distributor, or wholesaler.⁶ The minimum lawful payment for a dealer's warranty work is the dealer's established retail hourly rate times the amount of time required to complete the work.⁷ The minimum lawful payment to a dealer for parts used for warranty work is the dealer's cost for the parts, plus shipping and handling charges, plus 15 percent of the cost of the parts and shipping charges.⁸

Returned Parts

Manufacturers and distributors must allow dealers to annually return for credit at least 6 percent of the dollar value of the parts purchased by the dealer during the prior year.⁹ A dealer must be credited with at least 85 percent of the wholesale cost of the returned parts.¹⁰

Repurchased Inventory

Within 60 days after the termination of a franchise agreement between a tractor or farm equipment dealer and a manufacturer or distributor, the manufacturer or distributor must offer to repurchase the dealer's inventory.¹¹ For new tractors and other complete equipment, the dealer must be paid 100 percent of the dealer's cost plus freight, less a reasonable allowance for depreciation.¹² For repair parts, the dealer must be paid 85 percent of the wholesale cost, plus an additional 6 percent for the dealer's costs to return the parts.¹³

Franchise Agreement Termination

A manufacturer or distributor may not without due cause fail to renew a franchise on terms then equally available to all of its tractor or farm equipment dealers, terminate a franchise, or restrict the transfer of a franchise unless the franchisee receives fair and reasonable compensation for the inventory of the business.¹⁴ A dealer must be notified in writing of the intent to terminate a franchise or selling agreement at least 90 days before the effective date of the termination of the agreement.¹⁵ The notice must also state the grounds for termination. A court may enjoin the termination of a franchise or selling agreement which was made without due cause.¹⁶

Under s. 686.413(3)(c)2., F.S., a manufacturer or distributor has due cause to terminate or refuse to renew a franchise agreement if the dealer:

⁶ Section 686.405(2)(a), F.S.

⁷ Section 686.405(3)(a), F.S.

⁸ Section 686.405(3)(b), F.S.

⁹ Section 686.406(3)(c), F.S.

¹⁰ Section 686.406(3)(e), F.S.

¹¹ Section 686.407, F.S.

¹² Section 686.407(2)(a), F.S.

¹³ Section 686.407(2)(b), F.S.

¹⁴ Section 686.409, F.S.

¹⁵ Section 686.413(3)(c)1., F.S.

¹⁶ *Id.*

- a. Has transferred an ownership interest in the dealership without the manufacturer's or distributor's consent;
- b. Has made a material misrepresentation in applying for or in acting under the franchise agreement;
- c. Has filed a voluntary petition in bankruptcy or has had an involuntary petition in bankruptcy filed against her or him which has not been discharged within 60 days after the filing, is in default under the provisions of a security agreement in effect with the manufacturer or distributor, or is in receivership;
- d. Has engaged in unfair business or trade practices;
- e. Has inadequately represented the manufacturer's or distributor's products with respect to sales, service, or warranty work;
- f. Has inadequate and insufficient sales and service facilities and personnel;
- g. Has failed to comply with an applicable federal, state, or local licensing law;
- h. Has been convicted of a crime, the effect of which would be detrimental to the manufacturer, distributor, or dealership;
- i. Has failed to operate in the normal course of business for 10 consecutive business days or has terminated her or his business;
- j. Has relocated her or his place of business without the manufacturer's or distributor's consent; or
- k. Has failed to comply with the terms of the dealership or franchise agreement.

Unfair Competition and Unfair or Deceptive Acts or Practices

The act also defines and prohibits numerous unfair methods of competition and unfair or deceptive acts or practices.¹⁷

Legal Remedies

A contract or franchise agreement or a provision of a contract or agreement in violation of the act is unenforceable.¹⁸ Additionally, a person who is harmed as the result of a violation of the act may bring an action in circuit court for damages, including punitive damages in some cases, and attorney's fees.¹⁹ The act may also be enforced by the Department of Legal Affairs or by a state attorney.²⁰

III. Effect of Proposed Changes:

Scope of Act

The CS/CS/CS renames the Farm Equipment Manufacturers and Dealers Act as the Agricultural Equipment Manufacturers and Dealers Act.

¹⁷ Section 686.413, F.S.

¹⁸ Section 686.415, F.S.

¹⁹ Section 686.417(1) and (4), F.S.

²⁰ Section 686.417(5), F.S.

The CS/CS/CS expands the application of the act by deleting the word “farm”²¹ from the defined term “farm equipment” as it is used throughout the act. Further, the definition of “farm equipment,” now “equipment” under the CS/CS/CS, includes items primarily designed for use in agriculture²² or horticulture.²³ Additionally, the defined term “tractor or farm equipment dealer” becomes “dealer” under the CS/CS/CS. A “dealer” is “a person who sells, solicits, or advertises the sale of new and used equipment to the consuming public.” As such, any duty under the act owed by a manufacturer or distributor to a tractor or farm equipment dealer is owed to a person or entity meeting the expanded definition of dealer under the CS/CS/CS. The CS/CS/CS specifies, however, a dealer does not include a mass-market retailer. In addition, through the definition of the term “equipment,” the measure provides the act does not apply to machinery primarily designed for, or used in, off-road construction, mining, or industrial non-agricultural purposes.

Definitions

The CS/CS/CS adds the terms “dealership,” “relevant market area,” and “termination” to the definitions section of the act.

Payments to Dealers

The CS/CS/CS makes it unlawful for a manufacturer or distributor to deny, delay payment for, or restrict a claim by a dealer for warranty service or parts, incentives, hold-backs, or other amounts owed to a dealer.

Audits of Dealers

The CS/CS/CS requires a manufacturer, distributor, or wholesaler who conducts audits of warranty claims submitted by a dealer to conduct the audit within 1 year after paying the claims. A dealer may only be charged back the amount of claims paid that are shown by an audit to be invalid. However, a dealer may be charged back for a fraudulent claim after the one-year period. Audits of the incentives or rebates paid to a dealer must be conducted within 12 months after the end of the incentive compensation program. Audits of the incentives paid to a dealer may take place after the 12 month period in the case of fraud.

Repurchased Parts

Under current law, a repair part with a limited storage life is exempt from the items a manufacturer or distributor must purchase from a dealer when the dealer’s franchise agreement

²¹ As used in s. 823.14, F.S., the Florida Right to Farm Act, the term “‘Farm’ means the land, buildings, support facilities, machinery, and other appurtenances used in the production of farm or aquaculture products.”

²² As used in the state’s agricultural laws, the term “‘Agriculture’ means the science and art of production of plants and animals useful to humans, including to a variable extent the preparation of these products for human use and their disposal by marketing or otherwise, and includes aquaculture, horticulture, floriculture, viticulture, forestry, dairy, livestock, poultry, bees, and any and all forms of farm products and farm production.” Section 570.02(1), F.S.

²³ Horticulture is “the science and art of growing fruits, vegetables, flowers, or ornamental plants.” Merriam-Webster’s Collegiate Dictionary 559 (10th ed. 2001).

terminates. Under the CS/CS/CS, repair parts with a limited storage life must be purchased upon the termination of a franchise agreement.

Notice of Competing Dealerships

When a manufacturer, distributor, or wholesaler decides to establish a new dealership or relocate an existing dealership into the relevant market area of an existing dealership, the dealer must be provided with at least 180-days written notice.

Dealer Preparation and Delivery Fee

When a manufacturer, distributor, or wholesaler directly sells an item of equipment in a dealer's territory, the dealer should, if practical, be used to prepare and deliver the equipment. The dealer must be paid at least 7 percent of the sale price of the equipment for the preparation and delivery of the equipment.

Franchise Agreement Termination

Under existing law, a dealer must be provided with at least 90-days notice before a franchise or selling agreement may be terminated. Under the CS/CS/CS, a dealer must be provided with at least 180-days notice. Furthermore, the CS/CS/CS prohibits the termination of a franchise or selling agreement if a dealer cures the deficiency for which the agreement is to be terminated during the 180-day notice period. If the termination of a franchise or selling agreement is sought because a dealer has failed to meet marketing or market-penetration criteria, the dealer must be provided with notice of the intent to terminate the agreement at least 1 year before the termination. During the 1-year period, the manufacturer or entity issuing the notice must make good faith efforts to assist the dealer to gain market share. If the termination of the selling or franchise agreement continues to be sought after the 1-year notice period, the dealer must be provided with an additional 90-days notice before the effective date of the termination of the agreement. The notice must specify the reasons for the determination the dealer failed to meet marketing or market-penetration criteria. If the dealer cures the deficiency in the 90-day notice period, the agreement may not be cancelled. Additionally, a dealer may seek an injunction against the unlawful termination of an agreement for failure to meet marketing or market-penetration criteria.

Unfair Competition and Unfair or Deceptive Acts or Practices

The CS/CS/CS provides the following acts by a manufacturer, distributor, or wholesaler are unlawful:

- Imposing unreasonable restrictions on the dealer relative to transfer, renewal, termination, location, or site control; and
- Preventing a dealer from having an investment in or holding a dealership contract for the sale of competing product lines or requiring a dealer to provide separate facilities for competing product lines.

The CS/CS/CS adds agricultural tractors, agricultural implements attached to a towing unit, or self-propelled agricultural implements to the types of equipment qualifying for the exemption from the limitations on maximum width and length.

The CS/CS/CS makes other grammatical and technical changes to the act.

The CS/CS/CS provides an effective date of July 1, 2004.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Because the CS/CS/CS expands the types of dealers who may be protected under the Farm Equipment Manufacturers and Dealers Act, the contractual relationships between more dealers and their suppliers may be governed by the act.

Provisions of the CS/CS/CS may enhance the degree of economic security in dealers' business relationships with suppliers for those equipment dealers who are covered by the act, such as the provisions:

- i. Making it unlawful for a dealer's supplier to withhold payment of funds owed to a dealer;
- ii. Requiring a dealer's suppliers to provide 180-days notice to the dealer when a competing dealer will be located in the existing dealer's relevant market area;
- iii. Providing franchise agreements may only be terminated for failure to meet marketing or market-penetration criteria with advance notice to the dealer of at least 1 year and 90 days;
- iv. Prohibiting a dealer's suppliers from imposing unreasonable restrictions on the location, transfer, and site control of a dealer; and

Making it unlawful for a manufacturer, distributor, or wholesaler to prohibit a dealer from selling competing product lines.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
